

NOTICE OF EMERGENCY REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5058, and the rulemaking authority granted by PC Sections 5058.3, in order to implement, interpret and make specific PC Sections 5054, proposes to amend Section 3000 and adopt Section 3334 of the California Code of Regulations (CCR), Title 15 concerning the Behavior Management Unit (BMU).

PUBLIC HEARING:

Date and Time: **September 18, 2008, from 9:00 am - 10:00 am.**
Place: Correctional Standards Authority
660 Bercut Dr.
Large Conference Room
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close 5:00 PM on September 18, 2008. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Fenando Azevedo
Correctional Lieutenant
Regulation and Policy Management Branch
Telephone (916) 323-6156**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Nancy Hardy
Associate Warden
Division of Adult Institution, High Security & Transitional Housing
Telephone (916) 323-4223**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340. This regulatory action:

- Recognizes the Department has identified a need to take immediate and appropriate corrective action to prevent inmates from their involvement in disruptive behavior, violence, refusal to participate in inmate programs, or continued noncompliance with CDCR rules and regulations. As a result, the Behavior Modification Unit (BMU) Pilot Program was implemented pursuant to Penal Code Section 5058.1 on November 21, 2005. This program is designed to modify recalcitrant inmate behavior, reduce the opportunity to repeat the behavior, and provide non-disruptive inmates the ability to program without continual interruption. The name of the program was changed from its pilot name, Behavior Modification Unit, to Behavior Management Unit (BMU).
- Will allow the department to provide alternate General Population (GP) housing and programming for those inmates who are deemed program failures, who participate in gang activity, who refuse to participate in racial integration, who refuse to double cell, and those released from the Administrative Segregation Unit/Security Housing Unit (ASU/SHU). This alternate GP housing will allow GP inmates desiring to program without violence or disruptive conduct to do so unaffected by a smaller, more disruptive segment of the inmate population.
- Will amend and adopt regulations to permanently implement the BMU. These proposed amendments will give staff the tools to carry out the application of the BMU in a fair and consistent manner.
- Will have a positive impact on controlling and rewarding inmate behavior. These changes will also further the safety of all persons and the legitimate penological interests of the institutions.
- Will amend the current CCR with language which has been written for clarity and clear reference by staff, inmates, and the public in general.